

MINUTES OF HARRISONBURG PLANNING COMMISSION

March 11, 2009

The Harrisonburg Planning Commission held its regular meeting on Wednesday, March 11, 2009, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Charles Chenault, Muawia Da'Mes, Alan Finks, Bill Jones, and J.M. Snell.

Members absent: None

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Burden called the meeting to order and determined a quorum with all seven members in attendance. He then asked for review and approval of the minutes from the February 11, 2009 Planning Commission meeting.

Mr. Da'Mes moved to approve the minutes from the February 11, 2009 meeting.

Mr. Snell seconded the motion.

All voted in favor of approving the minutes. (7-0)

New Business

Preliminary Plat – Hidden Creek Properties Section Two

Chairman Burden read the first item of business and asked for staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Planned Business. This designation states that these areas are suitable for commercial development but need careful controls to ensure compatibility with adjacent land uses.

The following land uses are located on and adjacent to the property:

Site: Undeveloped parcel, zoned B-2

North: Single family homes, zoned R-1

East: Commercial uses and vacant lots, zoned B-2

South: Across Hidden Creek Lane, commercial uses, zoned B-2

West: Single family homes, zoned R-3

The applicant is requesting to preliminarily subdivide one, 7.7 +/- acre lot into two parcels. The parent tract predominately fronts along Hidden Creek Lane with a small extension of the parcel fronting along South High Street. The proposed subdivision would create a 31,785 square foot lot on the tract's western edge, with approximately 95-feet of frontage along Hidden Creek Lane. The property division is considered a major subdivision because the original tract of land is larger than 5 acres; therefore it exceeds the requirements for administrative review as a minor subdivision, and must be reviewed by Planning Commission.

As illustrated on the plat, the property owner is dedicating the required utility easements along with a 50-foot private access easement that would be centered on the proposed eastern boundary. Also

observe, although not required, there is a permanent 12-foot green area that exists along the western boundary of the proposed lot.

The applicant should be aware that the stormwater facilities that are located near the private access easement will most likely need to be relocated and improved. Final determination of that will be resolved during a comprehensive site plan review when the property develops. The City's Engineering Division would further like the property owner to be aware that future comprehensive site plans for developing this property, and the balance, will need to consider stormwater management as if it were unrelated from the other Hidden Creek developments because previous stormwater facilities that were constructed with the shopping center are outdated and do not comply with current standards.

City Council does not have to review this application because there are no variance requests. The division conforms to the regulations of the Subdivision Ordinance; therefore, staff recommends approval of this application.

Chairman Burden asked if there were any questions for staff. Hearing none, he stated this was not a public hearing; however, if the applicant or applicant's representative would like to speak they may.

Mr. Steve Weaver said he is the applicant for the request and is available to answer any questions the Planning Commission may have.

Mr. Baugh moved to approve the request as presented.

Mr. Chenault seconded the motion.

All voted in favor of the motion (7-0). Chairman Burden said this does not move forward to City Council; therefore it is approved.

Special Use Permit – 1680 Country Club Road (Religious Use 10-3-97 (9))

Chairman Burden read the request and asked for staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

Site: A 49,000 sq. ft. warehouse building, zoned M-1

North: Blackrock Contracting, Inc. (Asphalt Plant), zoned M-1

East: Cargill Turkey Production, zoned M-1

South: Contractor's business office, vacant car dealer/shop, zoned M-1 and across Country Club Road undeveloped land, zoned B-2

West: Blackrock Contracting, Inc. (Asphalt Plant) and offices, zoned M-1

This is a request for a special use permit per Section 10-3-97 (9) of the Zoning Ordinance to allow a religious use within the M-1, General Industrial District. If approved, the applicant intends to renovate 11,460 sq. ft. of an existing 49,000 sq. ft. warehouse building to be used by Valley Church. The property, a 7.3-acre parcel along Country Club Road, east of the intersection with Linda Lane, was the former Sierra Manufacturing Company, and most recently, offices for Blackrock

Contracting, Inc. Currently, the building is empty and being marketed for lease as warehouse space; if approved the church would only occupy a portion of the building, and the remaining area could be leased for other permitted industrial uses.

Staff does not have any concerns in regard to the religious use at this location; however there are concerns regarding the size of the church and impacts with traffic entering and exiting the property. Valley Church would offer three services at this location, one on Saturday evenings at 6:30 p.m., and two on Sunday mornings at 10:00 a.m. and 11:30 a.m. They have provided a breakdown of what number of parishioners might attend each service, keeping in mind that additional services may need to be added as their congregation grows. The proposed building floor plan submitted with the application shows seating for 643 persons within the main sanctuary. Based upon this information, staff concluded that a full traffic impact analysis was not needed, but requested that a turn lane analysis be performed.

The applicant's engineer has already performed a turn lane analysis, which demonstrated a need for turn lanes during the church's primary service at 11:30 a.m., but that a turn lane is unnecessary during all other proposed service times. City staff has reviewed the analysis, and given that it is not unreasonable to expect that the Sunday 10:00 a.m. service will soon reach or exceed the threshold, it was determined that a left turn lane from Country Club Road into the property would be necessary. The applicant has been made aware of the decision and is working with the City and their engineer to determine the scope of the work that would be needed to provide a turn lane. This could be as simple as restriping the lanes or widening improvements.

The Comprehensive Plan recommends that this portion of Country Club Road, from Linda Lane to East Market Street, be widened to a 3-lane facility with pedestrian and bicycle accommodations. Although no design work has been done for these improvements, it is recognized that right-of-way acquisitions would be necessary. Staff is asking that 10 feet of right-of-way be dedicated along the frontage of the site for future road improvements.

The applicant is aware that if they receive approval of the request, they would need to apply for the proper permits from the Building Division. This would require that all building code regulations be met for the proposed use and any other planned renovations associated with the church.

Parking requirements for churches are calculated at one parking space for every ten fixed seats, or two parking spaces for every ten portable seats for the largest capacity assembly area. The sanctuary is the largest assembly area for Valley Church with 643 portable chairs; therefore total required parking is 129 spaces. This site has a large parking and maneuvering area, surrounding the entire building, which is a mix of pavement and gravel with some marked parking spaces. The site drawing provided by the applicant shows that a total of 290 parking spaces can be provided. Staff has made the applicant aware that the required 129 spaces will need to be clearly marked, which will be checked during the building permit review process. Staff has also informed the applicant that any parking retrofits, such as grading or new pavement and gravel, would require an approved comprehensive site/erosion and sediment control/stormwater plan and appropriate permitting prior to any work being done.

Staff questioned the idea of mixed uses within the building because the church would only occupy a portion, leaving the remaining area available to be leased to other uses permitted within the M-1 zoning classification. This could create more noise or traffic and may be seen as unpleasant or distracting for the church. The applicants have informed staff that the property owner has agreed to not allow any other uses that may lease the property to operate on Sundays; thus leaving the site

available on Sunday for church use only. The applicants have also stated that the church is not generally used during the week so that there would be no conflicts between uses; however this may not be true of any church that could locate on site. For this reason staff suggests a condition that the special use permit be limited only to Valley Church.

Staff feels this is a viable way to repurpose a portion of an existing empty warehouse building and recommends in favor of the special use permit with the following suggested conditions:

1. The special use permit is limited only to Valley Church at this location;
2. The applicant installs a left turn lane from Country Club Road into the site and that no building permits for the church would be released until plans are approved and bonded, if necessary, for the left turn lane or the left turn lane is constructed;
3. The owner dedicates 10 feet of right-of-way along Country Club Road for future road widening.

Chairman Burden asked if there were any questions for staff.

Mr. Snell asked what is the logic we used for tying the left turn lane issue to the release of the building permits as opposed to the certificate of occupancy (CO).

Mrs. Banks said this allows for the applicant to get their site plan for the road improvements approved and bonded, if necessary, and their building permit approved so they can begin work on each.

Mrs. Turner said we actually feel it is more lenient to tie it to the building permit rather than the CO. There could be a situation where the applicant might be ready for the CO, and for some reason, the contractor for the road improvements suddenly cannot do the site work, then the CO could not be issued.

Mr. Fletcher said this was less of a hardship to the applicant if we did it this way.

Mr. Da'Mes said given the mixed use of the facility, I noticed that a lot of the markings in the parking lot were where the trucks for the warehousing would park. Would the parking be adequate given that trucks may be utilizing the area?

Mrs. Banks answered yes; it would have to meet requirements.

Mr. Da'Mes said so the difference between what is required and what is available at this time is what.

Mr. Fletcher said for warehousing uses it is very minimal parking that needs to be installed; therefore they have more than enough area to accommodate both uses.

Mrs. Banks said if the church is not occupying the building on a Tuesday and a truck needs to come in and maneuver through the parking area there is adequate room. A truck should not be coming through on a Sunday, per the agreement with the owner and the church.

Mr. Fletcher said that is part of the applicant's arrangement with the owner.

Mr. De'Mas said his only thought was that sometimes truck trailers are left there to be picked up at a later date.

Chairman Burden asked what is the number of parking spaces that is shown in front of what would be the church entrance.

Mrs. Banks said 34 spaces, all of which are not striped.

Chairman Burden said how about within the successive rows beyond that.

Mrs. Banks said in the entire front area 119 parking spaces are shown. In order to get all of those spaces in, it may take some grading and site work. There are also handicapped spaces in the area along the very front of the building. The dock doors along the western side of the building will not be used anymore and those spaces would be marked.

Chairman Burden asked if there were any further questions or comments for staff. Hearing none, he opened the public hearing and asked if the applicant or applicant's representative would like to speak.

Mr. Gary Crummett, 3437 Blossom Drive, said he is representing Valley Church. Valley Church was formed four years ago, with about 80 people meeting at the Ramada Inn. During the last four years we have moved several times and grown to over 600 people. Currently, Valley Church meets at the old Harrisonburg High School, which they lease from JMU, only on Sunday mornings; they do not have a building the rest of the week. They have to rent office space at another location. The lease with JMU runs out this fall and it will not be renewed. The biggest problem the church has in finding a location is parking; there are just few buildings that have enough parking for them. This location has enough and the plans would be to renovate part of the warehouse space for the sanctuary. The front part of the building is already office space, which they will utilize; they can also utilize the warehouse for the food donation/storage program, which is operated locally. The building really fits all the needs for the church.

We understand that we will need to construct a left turn lane into the facility. I can also add that re-striping will not be enough to accommodate the turn lane. Our engineer has looked at it and we will need to add a little bit of pavement. We will begin working on the plans to accomplish that. As for the concern regarding tying the work to the building permit or the CO, we are working under a tight deadline to get things done before the fall and we will make every attempt to get the engineering work done for the turn lane. We need to be in the building working on renovations no later than July in order to have it ready in the fall; so from our standpoint tying it to the CO would be better. But we will work under any guidelines set by you.

Chairman Burden asked if there were any questions for Mr. Crummett. Hearing none, he asked if there was anyone else who wanted to speak on behalf of the applicant. Hearing none, he asked if there was anyone who wished to speak in favor of the request. Hearing none, he asked if there was anyone who wished to speak against the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Mr. Snell said in the letter from Valley Engineering that referenced that the turn lane was a probable necessity; it also reads in the second paragraph, that a right turn lane may be a necessity. I presume their engineer is talking about a brake down lane?

Mrs. Banks said yes, he is.

Mr. Snell said the speed limit is 35 through here, is staff not concerned about this? There is somewhat of a brake down lane there now, but is it enough for a turn distance into the church?

Mr. Fletcher replied that the City Engineer did not have any concerns regarding that and it may be accommodated just by the necessary restriping.

Chairman Burden asked if there were any further questions.

Mr. Finks moved to recommend approval of the request with the suggested conditions.

Mr. Da'Mes seconded the motion.

All voted in favor of the motion to recommend approval with the conditions as presented (7-0).

Chairman Burden said this item will move forward to City Council on April 14, 2009 with a favorable recommendation.

Special Use Permit – 1941 South High Street (Contractor Sales 10-3-91 (6))

Chairman Burden read the request and asked staff for comments.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, wholesale, or service functions. These areas are found along major travel corridors and in the Central Business District of the City.

The following land uses are located on and adjacent to the property:

Site: Former Dayton Equipment warehouse and office buildings, zoned B-2

North: Non-conforming dwelling and a towing company, zoned B-2

East: Commercial businesses and office building, zoned B-2

South: Across South High Street, Miller's Cabinets and Furniture Store, zoned B-2

West: Dairymen Specialty Company, within Rockingham County, zoned B-1

The applicant is requesting a special use permit, per Section 10-3-91 (6) of the Zoning Ordinance, to allow contractor sales and storage in the B-2, General Business District. A letter from the applicant dated February 11, 2009, states if the special use permit is granted the applicant intends to lease to Southern Refrigeration Corp. for the purpose of selling HVAC equipment and supplies. Southern Refrigeration Corp. currently operates as a by-right use within an M-1, General Industrial District on South Avenue.

The site is located along South High Street adjacent to the City/County boundary. Situated on the property are three buildings; the applicant proposes to lease the largest structure, which is 12,175 sq. ft., to Southern Refrigeration Corp. The other two buildings would remain empty, and at some point, the applicant intends to make renovations and lease the two remaining structures.

Currently on the site are sixteen, marked parking spaces, as well as a large graveled area, which could be used for parking and maneuvering. Parking for the intended use would be calculated based upon one space for each two persons working on the premises, plus one space for every truck or vehicle associated with that business. Southern Refrigeration Corp. intends to have six employees and a vehicle associated with their business, which means four parking spaces would be required. At this time, parking spaces exceed the requirements; however, additional marked parking spaces may be required before other buildings on the property can be occupied. This would be determined during the building permit phase if necessary.

South High Street is a highly traveled corridor and primary gateway into the City. Developments along this corridor vary between commercial and industrial uses and staff believes this request is similar to the surrounding area and consistent with the long term plan for this section of the City. Staff wants to maintain an attractive appearance along this entrance corridor; therefore, staff

suggests a condition to prohibit any outside storage associated with the intended use and to screen any dumpster from public view.

Staff supports this request with the suggested conditions and a favorable recommendation to City Council.

Chairman Burden asked if there were any questions for staff. Hearing none, he opened the public hearing and asked the applicant or applicant's representative if they would like to speak.

Mr. Jerry Horst, 2836 Nutmeg Court, said he is the applicant and can answer any questions the Planning Commission may have.

Chairman Burden asked if there were any questions for Mr. Horst. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition to the request. Hearing none, he closed the public hearing and asked Planning Commission for comments.

Mr. Chenault moved to approve the special use permit with the condition that outside storage associated with the intended use be prohibited and that all dumpsters or major trash receptacles be screened.

Mr. Da'Mes seconded the motion.

Chairman Burden asked if there were any further questions. Hearing none, he called for a voice vote on the motion.

All voted in favor of the motion to approve the special use permit with the stated condition (7-0).

Chairman Burden said this will move forward to City Council with a favorable recommendation on April 14, 2009.

Special Use Permit – 521 Blue Ridge Drive (Major Family Day Home 10-3-34 (6))

Chairman Burden read the request and asked staff to comment.

Mr. Fletcher said the Comprehensive Plan designates this area as Low-Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

The following land uses are located on and adjacent to the property:

- Site: Single family dwelling and daycare facility operating in violation of the zoning ordinance, zoned R-1
- North: Single family dwelling, zoned R-1
- East: Single family dwelling, zoned R-1
- South: Across Country Club Road, non-conforming Southeastern trucking company, zoned R-1
- West: Across Blue Ridge Drive, single family dwelling, zoned R-1

The applicants are requesting a special use permit per Section 10-3-34 (6) of the Zoning Ordinance to allow a "major family day home" within the R-1, Single Family Residential District. The property is located at 521 Blue Ridge Drive on the northeastern corner of the controlled intersection

of Blue Ridge Drive and Country Club Road. As with other family day homes, the Virginia Department of Social Services (VDSS) regulates licensing standards and ensures that the activities, services, and facilities of the family day home are conducive to the welfare of the children in care. However, the VDSS has a statement on their licenses, which states that the permission from the VDSS does not exempt them from maintaining compliance with local ordinances and laws.

“Major family day homes” are defined by the Zoning Ordinance as: *A child day care program offered in the residence of the provider or the home of any of the children in care for six (6) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.* Based upon an approved home occupation permit, the applicants’ facility, known as A Smiley Daycare LLC, has been operating a “minor family day home,” from this location, for almost ten months; however, the applicant told staff they have been operating at this location for the past year and a half. Prior to their operation at this location they cared for children at another nearby home along Blue Ridge Drive for approximately a year. “Minor family day homes” are categorized differently than “major family day homes” and are allowed by right within all residential zoning classifications; this is because the Code of Virginia requires local zoning ordinances to consider what we define as a “minor family day home” as a single family home with no further conditions or restrictions placed on such homes. The Zoning Ordinance defines “minor family day homes” as: *A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through five (5) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single-family shall be imposed on the day home.* The requirement for a special use permit for “major family day homes” is permitted through the Code of Virginia, which also states that family day homes shall be licensed when the program provides care for six through 12 children.

For comparison, there are similarities between “major family day homes” and “child day care centers,” which are also permitted by special use permit within the R-1 zoning district. “Child day care centers” are defined as: *A regularly operating service arrangement for two (2) or more children under the age of thirteen, where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four-hour period, in a facility that is not the residence of the provider or any of the children in care. A nursery school shall be considered to be a child day care center.* Notice the main difference between a “major family day home” and a “child day care” is that the facility cannot operate at the home of the care provider or the residence of any of the children receiving care. The City requires that “child day cares” provide one parking space per 200 square feet of gross floor area, and although there are no parking regulations for “major family day homes,” if one were to use the same parking calculation rate for the subject property, the applicant would be required to provide about seven parking spaces.

The City does not have any legal “major family day homes” operating within any residential districts as the City has never approved a “major family day home” special use permit application. To staff’s knowledge, there have only been two applications; the first in 1996 at 1190 Westmoreland Drive and the second in 2004 located at 1781 West Market Street. The request at 1190 Westmoreland Drive was supported by staff with conditions such as limiting the hours and days of operation, requiring staggered intervals of pick-up and drop-off for parents/guardians, and

limiting the use to only one additional employee. Planning Commission recommended approval of the request but added a condition that the special use permit would expire in two years, causing the applicant to return for additional review. Nearby residents expressed concern for the number of children that would have been allowed and a concern for the hours of operation. City Council ultimately denied the application stating this type of use could operate in a more appropriate zoning classification and that it could potentially hurt property values and set a precedent for future requests.

The other application was at the intersection of West Market Street and Garbers Church Road. Staff had multiple concerns with the property's location at the intersection and how the use would impact the safety of both bypassing vehicles and those traveling to and from the proposed use. Staff recommended denial of the application, but the public hearing never occurred because the applicant eventually withdrew their request.

In the fall of 2008, staff received a concern that the property owner, at 521 Blue Ridge Drive, could be caring for more children than is permitted under the "minor family day home" use. Staff sent the property owner a notification to resolve the concern and when the property owner contacted staff, it was determined they were in fact operating outside the parameters of a "minor family day home." The applicants were prepared to apply for a special use permit at that time, but also said they were in the process of looking for another property from which to run the family day home. Since the applicants were looking to move the care facility to a new location, staff advised them not to apply for the "major family day home" special use permit, and granted them an extension to rectify the violation. It is normal practice to allow a violation to continue operating as long as the property owners are actively pursuing rectification of the violation. The applicants worked with a realtor to find a location, but they were ultimately unsuccessful and therefore applied for the "major family day home" to continue operating the care facility at 521 Blue Ridge Drive.

The current application, from A Smiley Daycare LLC, has a City of Harrisonburg business license along with a license from the VDSS to operate a family day home at the subject parcel for a capacity of 12 children between the ages of six weeks through 12 years. Note that the capacity of 12 children limits them to 12 children at a time, and that it does not limit them to a total of 12 children throughout the day. During the review of this application, the applicant told staff their current maximum number of children they care for at one time is eight. As a reminder, the license from the VDSS states that the permission from the VDSS does not exempt them from maintaining compliance with local ordinances and laws. Approval of this special use permit application would bring them into compliance with the Zoning Ordinance; however they could still have issues with the Building Code. On the Friday prior to the Planning Commission meeting, staff discovered the Building Code could require the applicants' home to be improved because when a family day home provider begins to care for more than five children at one time, the dwelling occupancy must be reclassified, which could trigger necessary improvements. The applicants were contacted about this issue and are analyzing their alternatives. Compliance with the Building Code does not interrupt the process of the special use permit application, but if approved, the applicants could be required to make improvements.

Although staff understands the need for a care facility of this type, and we appreciate the positive feedback supplied by some of their clients, staff does not believe a "major family day home" should operate at this location. Even though the VDSS' license approved a capacity that is equivalent to our definition of a "major family day home," as noted above, the license further requires them to

comply with local ordinances and laws, which means the VDSS is relying on the City to provide further guidance on the appropriateness of such a use at this location.

On January 6, 2009, the City had a traffic counter positioned on Country Club Road between Blue Ridge Drive and Carlton Street; there were 4,658 vehicles that traveled eastbound and 4,994 vehicles that traveled westbound on Country Club Road. Most, if not all, vehicles traveled through the Country Club Road/Blue Ridge Drive intersection. Furthermore, based upon the Virginia Department of Transportation's (VDOT) annual average daily traffic volume estimates, 4,400 vehicles traveled Blue Ridge Drive between Star Crest Drive and Country Club Road. Although some of these cars may not be traveling through the intersection, it is important to understand the volume of traffic near this intersection is significant.

The property is located at an awkward, skewed intersection, which is also not a standard four way junction. The traffic signal controls several vehicle movements. First, it controls the east/west (or straight) traffic movement on Country Club Road. For vehicles to turn north/south onto Blue Ridge Drive, they must yield to oncoming traffic during the green light. Vehicles are prohibited from making "right on red" turns from Country Club Road. The traffic signal is split-phased due to the skewed alignment. In other words, cars waiting on either side of Blue Ridge Drive do not simultaneously utilize the intersection. Unlike Country Club Road, vehicles on Blue Ridge Drive can utilize "right on red" when appropriate. Country Club Road intersects another street, Clay Street, approximately 150 feet to the east of the main part of the intersection. This has added an additional stop bar to control traffic from blocking the junction of Clay Street and Country Club Road. Additionally, there is a transit bus stop situated at the junction of Country Club Road and Clay Street. Furthermore, due to the fact that there is a "minor family day home" operating from this location, there can be at times an unusual amount of traffic traveling to and from the subject parcel, which has poorly situated entrances. And to add to the congestion, children at this location are playing at this property, which could cause drivers' attention away from the road.

The property has a driveway with entrances on both Blue Ridge Drive and Country Club Road. Entering and exiting the property is difficult as anyone traveling to or from the subject property must maneuver through the heavily traveled, controlled intersection to or from the property's driveway entrances that are approximately 20 and 50 feet from the intersection. The two entrances allow vehicles to enter and/or exit from either road. As just discussed, entering the property is challenging, but exiting the property is even more difficult. Vehicles waiting to exit the property onto Country Club Road have no visual reference for any of the traffic signals; and therefore, must rely on the flow of traffic to figure out who has the green light. Vehicles waiting to exit from the Blue Ridge Drive entrance have an arguably safer circumstance. Automobiles waiting to exit can see the traffic signal that controls southbound Blue Ridge Drive traffic and can turn right onto that street when it is safe. Unfortunately, it is difficult to see if vehicles traveling west on Country Club Road are turning right onto Blue Ridge Drive or if they are driving straight through the intersection. If the person exiting the property wants to travel west onto Country Club Road, they must await their turn and travel with Blue Ridge Drive traffic, however they must move diagonally across the intersection to perform this task. Vehicles exiting the property to travel east on Country Club Road have to await their turn and travel with Blue Ridge Drive traffic patterns. Staff had a few internal discussions about the potential of relocating the entrances to make them safer, but the options are limited given the property's physical location and due to a large stormwater facility that is located on the lot.

The large number of vehicles passing through this intersection, and the unusual alignment and circumstances of the crossroads, cause staff to want to promote as little additional traffic as possible at this junction. It is difficult to determine exactly how many vehicles would come and go from this location regardless of whether it operates as a “major family day home” or a “minor family day home.” The applicant has told staff that the number of children continually changes and that multiple children could come in one car or each child that is being cared for could come in a separate vehicle. Therefore, if we considered a basic breakdown of a “major family day home,” which had two shifts that were fully occupied and each child came in a separate vehicle, there could be as many as 96 vehicle ends. This number seems excessive, but the number of children cared for is not static and the circumstances constantly change, so no one really knows how many vehicles would come and go from this location.

If staff had the authority to regulate the location of “minor family day homes,” we would not have recommended approval of a care facility at this property. Staff does not believe it is in the City’s best interest to allow more traffic to travel to and from this location than what is already permissible by the single family dwelling. In general, staff believes that any more intense use at this location is unsafe and does not recommend allowing any use to operate that would cause additional congestion.

Staff believes a “major family day home” at this location presents significant concerns for traffic patterns and safety, and therefore recommends denial of this application. If Planning Commission, however, decides to recommend approval to City Council, staff suggests the following conditions:

1. The “major family day home” shall be valid only for the current applicants.
2. Vehicles shall not be permitted to exit the property onto Country Club Road. All vehicles shall exit onto Blue Ridge Drive.
3. All existing shrubbery/plantings within the island created by the connecting portions of the driveway, near the southwestern property corner, shall be trimmed or removed to improve sight distance. All plantings within this area shall be low-lying and/or ground covering vegetation.
4. The connecting portions of the driveway shall remain open at all times to allow parents/guardians to maneuver on and off of the property without utilizing the public right-of-way. Therefore, parking is prohibited on these portions of the driveway.
5. If City Council finds traffic conditions warrant re-evaluation of the “major family day home,” they may require the applicant to return to Planning Commission to re-examine the use of the property. It shall be at the discretion of Planning Commission and/or City Council to determine if the re-evaluation shall necessitate a public hearing. Such re-evaluation may result in additional conditions being placed on the use or revocation of the special use permit.

Furthermore, if Planning Commission and/or City Council deem this request worthy of approval, staff could provide further analysis to determine if whether relocating the driveway entrances could potentially create safer traffic movements.

Chairman Burden said there are a lot of potential recommended conditions with this request, should we recommend approval. He then asked if there were any questions for staff.

Mr. Finks said he had received multiple phone calls from people residing in that area. The calls were concerns about the parking along the north bound side of Blue Ridge Drive, which is not wide

enough for a parked car in the lane. Numerous times I have seen cars parked there. Has this been taken into consideration?

Mr. Fletcher said he looked at the street to see where parking is controlled by Public Works, a sign or striping, there was nothing that said you could not park in that strip where the traffic intersection begins. I think it is visually seen that there is not enough room to park along Blue Ridge Drive until you move away from the lined intersection.

Mr. Finks said that does not prevent people from parking there.

Mr. Fletcher agreed.

Mr. Snell said in your summary you referenced building code issues; could you expand on that.

Mr. Fletcher said I do not know exactly what they would be required to do. Speaking with the Building Official and a Building Codes Inspector they said it depends on the use classification. They are considered a dwelling but once the care provider goes above the five threshold, they have to be reclassified from a dwelling occupancy; they could be classified as an "I" or an "E" type of use under the building code. What that means is they could be required to install something as expensive as a sprinkler system, fire walls, and a bathroom or as minor as marking exits. I would suggest that as this moves forward we work with the applicant to set-up an inspection of the property to give them a better understanding of what the financial obligation could be.

Mr. Snell asked if the building official's concerns were public safety issues.

Mr. Fletcher replied absolutely, they are always public safety issues.

Mr. Snell said residential code is not public safety issues.

Mr. Fletcher said it is for safety of the building and occupants.

Mr. Chenault said fire alarms, smoke detectors, and exits are all considered public safety.

Mr. De'Mas said if I was looking to open a major family day home facility are there any guidelines that you could provide me.

Mr. Fletcher said if someone comes in and wants to provide care for children, we explain that they can provide care for up to five children as a home occupation; for which this applicant did receive. This would be considered a minor family day home. If they want to keep more than five, we inform them it requires a special use permit. When you go to the Department of Social Services and go through their licensing procedure they are not involved in enforcing any of our procedures. This is why they have that statement on their license that says the applicant is not exempt from compliance with other local ordinances and laws. But to answer your question, we do not have a handout to give to applicants.

Chairman Burden said staff's opinion as opposed to the State's, appears to be hinged on the amount of traffic that would be coming in and out of this facility as compared to whether it was a single family home. There is that aspect of it; but it is impossible to not think about where this structure is, it is within an intersection. When I look at this I think that both of those entrances are within the box of the intersection.

Mr. Fletcher replied it is up to interpretation, but I think your analysis is correct; the entrances are beyond the control of the traffic signals. There is no visual reference; you are inside that intersection at that point and beyond the control mechanisms that tell you when to go.

Mr. Fletcher added that during the tour there was a question about when the entrance for this property was installed along Country Club Road and I did check on that. It occurred between 1996 and 2002, that is the best I can offer and this is based upon some aerials we have. It is roughly 50 feet from the intersection so it probably was installed in compliance with the Design and Construction Standards Manual as a safe situation.

Chairman Burden said the way you are analyzing it is that the entrance met the requirement of 50 feet, but that is when the use was considered to be just a single family home.

Mr. Fletcher said yes as a single family home, but also remember that Country Club Road and Blue Ridge Drive are both functioning completely differently than it was back then. There is significantly more traffic and population has increased in the area as well as uses have changed. Many variables have changed since that time.

Mr. De'Mas said the stop light was not there.

Mr. Fletcher replied yes, the stop light did not go in until last summer.

Mr. Snell said the City has had an entrance permit program for several years, I would think it went back further than 1996.

Mr. Fletcher said yes, public access permits, or entrance permits, have been kept on file for some time and this went through a public access permit process. This just allows you to do work within the public right of way, which is what entrances fall under.

Chairman Burden asked if there were any further questions. Hearing none, he opened the public hearing and asked the applicant or applicant's representative for comments.

Mr. Clint Sellers, 560 Neff Avenue, said he is the representative for the applicant. I want to begin by saying that the applicants are very interested in complying with the City ordinances, and that is why they have applied for this special use permit. In reading the staff's report, it appears that the primary concern is public safety and safety for those traveling along Country Club Road and Blue Ridge Drive. The uniqueness of this is that instead of it being considered an increase in the use, which is already a use that is permitted by right as a minor family day home, it is an opportunity for the City to regulate this use. I find it very unusual that there are no major family day homes within the City that are licensed by the City. It is very difficult to get licensed quality day care for very young children, particularly infants. I noticed in reviewing the Virginia Department of Social Services (VDSS) list of providers within the City that there are only three that are approved as being licensed by VDSS; therefore, we have a situation where there are a limited number of providers within the City for families who are sensitive to cost and might not otherwise be able to work. I think this is the opportunity to regulate the use, and as staff has also indicated, these applications are very circumstantial by nature. I would suggest to the Commission that given the proximity of some other uses, including the non-conforming one across the street, and the fact that this use is serving a community of people that by necessity have to share rides, ride the bus, etc., the worse case traffic scenario is minimal. In the event there were twelve families and each had a car you could have up to 96 vehicle ends. I understand staff's definition of vehicle ends, but in my mind I think of traffic increase or decrease being what comes onto or off of the public rights of way. If I understood staff's explanation correctly, a vehicle end counts as two and we get to the number 96 at any given time because we are counting the stop on the property as an end; is that correct.

Mr. Fletcher replied yes, that is correct, with the basic breakdown of allowing two shifts of twelve.

Mr. Sellers said I do not think we would ever get to a situation where we would have a substantial increase in traffic, such as that, were this application to be approved. I do agree, and the applicant agrees, that there should be conditions on this because it is so site specific. Because each of these is so circumstantial by nature it is impossible to look at these without considering the site itself. With this site we have some challenges; but we also have some opportunities. One of those that I thought was a good recommendation was allowing ingress and egress only in certain directions; which again would be an opportunity for control that the City does not currently have the opportunity to exercise now. The other suggestions offered, I thought were well taken; I would add that staff's additional recommendation of trimming or removing vegetation to improve the site distance is one that the applicant's do not disagree with.

This is a VDSS approved program, the fee for these children is fixed and if the applicants are limited to only five children at any given time, this will be a situation where they will not be able to continue operations. Although they have tried, they have not been able to find suitable real estate in this market. Perhaps a possibility would be to permit some sort of extension to allow for transition; once a daycare operation shuts down; it is difficult for parents to find other means of quality care for their children while allowing the parents to continue working.

In summary, the applicant agrees with the recommendations that have been put forth and they are open to considering others. If the Planning Commission is inclined to not recommend for this special use permit at this time, the applicant would ask that it be tabled for further analysis and to allow for questions to be answered about the entrances.

Chairman Burden asked what is the total number of children that are at the daycare on any given day, is it eight.

Mr. Sellers replied no, I believe there are two after school children. I am glad you asked that question because it highlights something that I forgot to address. The ingress/egress for the daycare is at different times throughout the day; there is never a time that everyone is arriving within the same ten to fifteen minute window. To answer your question, the answer is currently ten and that is with two that are only after school.

Chairman Burden said if there was only the current allowable limit of five applied to the daycare, your client's feel that they could not operate.

Mr. Sellers said that is correct. The nature of the work of the parents, which is what drives the need for the scheduling, is not such that there can be a twelve hour shift, and then another twelve hour shift. Although they have this many full time along with the after school children, it is rare that they are all at the house during the same time because of different schedules, or illness, etc. Scheduling of a full shift of five and then another full shift of five would be difficult.

Chairman Burden said such that if that were the only means by which to operate, they would have to shut down.

Mr. Sellers replied yes, that is what the applicants have told me.

Chairman Burden asked if there were any further questions for Mr. Sellers. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Candace Warlightner, 2540 Mosby Court, said she is here to speak on behalf of A Smiley Daycare. I think quality service is the main point for me; it is very hard to find this quality service. I started using Aneta about 2 ½ years ago, she's been a blessing to me. I am a single mother with very

limited income; I am attending school as well as working. I am limited as to daycare assistance that is available through Social Services. I understand that Aneta is one of the most desired daycares available and I know she has had to turn down people because she does not have the space. She teaches the children what they would be learning in preschool if they were there; this is a great service, because not all children are able to go to a preschool. My daughter is four and she has really opened up a lot from attending A Smiley Daycare. She is very social now and is learning to lead in certain circumstances. If this were to be shut down, I do not know if I could find another good quality daycare service. I believe that shutting down this daycare would take away a great service from the community. When children start out in school if they are behind, it is very hard for them to catch-up; they learn so much at this daycare that they are actually ahead of the crowd when starting school. If you have any questions for me, I would like to answer them.

Chairman Burden asked do you drive to the daycare.

Ms. Warlightner replied yes.

Chairman Burden said since that is what we have been discussing, can you tell us how you find entering and exiting the property.

Ms. Warlightner said with my experience I have not had any difficulty other than once or twice with vehicles that had me parked in on the property. I mostly use the Country Club Road side to exit and it is hard to see the light; but I duck down a bit and I can see the light.

Chairman Burden asked if there were any further questions for Ms. Warlightner. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Aracely Torres, 845 Vine Street, said she started using A Smiley Daycare about a 1 ½ years ago and has never had any trouble with the parking. I am very grateful to have my children in the daycare. They are three and five years old and they have learned very much at A Smiley Daycare. Aneta has taught my children many things that they would have learned in preschool. For me it was difficult to find a good daycare like this; I found others that I was not satisfied with. I do not have trouble with parking or exiting. If they put signs up we, as adults, can understand that this way is the exit or do not enter here. There should not be a problem should you decide entrance or exit signs are needed. If you decide to close this daycare it will be very difficult for me to find something as helpful as this daycare. If you have questions for me, I can answer them.

Chairman Burden asked if there were any questions.

Mr. Snell asked how do you drive onto the site.

Mrs. Torres said I turn left off Country Club Road onto Blue Ridge Drive and into the entrance from Blue Ridge Drive and I park directly in front of the house. On occasion I have exited out onto Country Club Road, it is difficult to see. When I exit onto Blue Ridge Drive I wait until the light turns green, then I wait for the other cars on Blue Ridge Drive to move through the light, then I exit out into the street.

Chairman Burden said if you could only take a right onto Blue Ridge Drive when you exit the property and then have to circle around the neighborhood would that be too much of a hardship for people leaving the property.

Mrs. Torres replied I do not think so.

Mr. Chenault asked how do we police that.

Chairman Burden said it may require reworking the curb to only allow right turns.

Mr. Fletcher said staff discussed recommending that as a condition of the special use and the policing issue came up. We ultimately did not suggest it as a condition because of that.

Chairman Burden asked if there were any further questions for Mrs. Torres. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Ruth Lynch, 1120 Clay Street, said her property directly adjoins the Smialek property and she does not have any children at this daycare, she is just speaking as a neighbor who is aware of the traffic in the area. I am at home a lot during the day and I see a lot; but I do not see where the problem is with the number of vehicles showing up at the property. I have only seen maybe three cars there at one time and I am home different days throughout the week at different times. I do not see a problem. If it is strictly because of public safety, then maybe the proposed one way in one way out is the right solution. I see more problems from where I live from accidents with the new traffic light on Blue Ridge Drive and Country Club Road. Are there any questions for me?

Mr. Snell said you are the neighbor and it appears that there may be some play things across the property line into your yard. Do you support the idea of there being a special use permit granted to continue on this daycare facility?

Mrs. Lynch replied absolutely. I do get to see firsthand when those children are outside, how they are supervised, what are their activities, the interaction with others. They are learning more than what you might learn in controlled daycare centers. I have gone in the house at different times throughout the day and have seen what goes on. If I really thought there was something wrong with this daycare I would have no problems speaking out about it. I do not see an issue with the traffic. I have seen more accidents right in front of my house because of the new traffic signal, but not once have I ever seen or heard of an accident coming in or out of the daycare.

Mr. Snell said because you have been in the house can you give us an idea as to what the average number of children is at any one time.

Mrs. Lynch said six. I have never seen twelve children there.

Chairman Burden asked if there was a rush hour of children at any time, perhaps in the morning or evening when leaving.

Mrs. Lynch said I have never seen such an influx where you have cars waiting to pull into the driveway. I have seen three there at one time, but their driveway is large enough to handle that; but they are coming in and leaving, they are not sitting around socializing.

Chairman Burden asked if there were any further questions for Mrs. Lynch. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Billy Jo Galyes, 412 Kelley Street, said I have a 10 year old, 4 year old and 1 year old. I used Aneta with my 10 year old since he was five; but now I have my 4 and 1 year old with her. She is the only person I can depend on. Other daycares that I have used just set the children in front of the TV; Aneta interacts with my children. She has taught them the ABC's, 1, 2, 3..., how to sing songs, and other different games. My children want to be there and learn; sometimes they do not want to leave because they are having so much fun. I do not have problems getting in or out of the traffic. I come in on Blue Ridge Drive and I pay attention to the traffic; there is no problem. As long as you pay attention to the vehicles you can get in and out easily. For safety purposes, Aneta has three cameras placed at the property; you do not see other babysitters that have cameras posted to protect your

children. She is willing to go the extra mile to keep these children safe. I would refer anyone to Aneta because she is that good.

Chairman Burden asked if there were any further questions for Ms. Galyes. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Nautica Coleman, 1620 South Buttonwood Court, said she is a young mother of two, a 4 year old and a 19 month old. I began service with Aneta with my oldest child and now have two under care. I am a single mother attending Eastern Mennonite University and I cannot afford daycare without some type of assistance. Tonight you will hear great reviews regarding Aneta; I believe she is a very good attribute to our area considering the society we live in where you cannot trust anyone with your children, even family members. In regard to coming in and going out into traffic, I come down Country Club Road onto Blue Ridge Drive and into the front area of the property. I exit off onto Country Club Road and you cannot see the light, but if you pay attention you can tell by the traffic when it is green and you can go. There is also plenty of room on the property to maneuver and back your car to get turned around if you need too. I have never had any controversy with parking; if there are three or more cars in the front yard you do have room to turn around and exit safely. 96 vehicles ends is a statistic and does not take into account real life situations, for instance when your child is sick and you do not come or vacations.

Mr. Finks said you realize you could exit onto Blue Ridge Drive and go north, straight out to Eastern Mennonite University.

Ms. Coleman replied, yes I could, but I choose not to. I just find it easier to go right, along with the traffic on Country Club Road when I know it is safe to go. Another scenario I take is when both ways are clear on Country Club Road, I can go straight across the road, towards the truck terminal, and loop around through that neighborhood to Carlton Street.

Chairman Burden asked if there were any further questions for Ms. Coleman. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Bobby Jo Mitchell, 355 Effinger Street, said she is a single mother and uses Aneta. I come in and exit onto Blue Ridge Drive; I do not use Country Club Road. I arrive at about 5:50 a.m. and there are no vehicles parked there. When I pick up in the afternoons it is usually my vehicle, maybe one other. Aneta is the only person that I trust with my children. When my child began with Aneta he was about three months behind others his age, now my child is with his age range in learning.

Mr. De'Mas asked when you exit north onto Blue Ridge Drive, the light there is skewed, it is not directly in front of you; but there is a light there which you can see.

Ms. Mitchell said when the Blue Ridge Drive cars have the right of way is when I turn out, left, onto Blue Ridge Drive. I know when those cars are moving no other cars should be coming in from the left along Country Club Road. I always pause to make certain that there are no vehicles coming. Aneta is the only person I trust with my child. If she is down-graded to fewer children, my child will be the one let go. If that happens I cannot afford another babysitter, so I could not work, and my child and I would be homeless.

Chairman Burden asked if there were any further questions for Ms. Mitchell. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Michelle Bolla, 70 Northfield Court, said she is a single mother of two and is a full time college student. I use to operate a minor day home in my house, it was a great experience, but when I

decided to go back to school I met Aneta and started my children with her. My children have been going there for two years and her daycare is wonderful. She knows what she is doing and she is a really great, trustworthy person. My five year old is autistic and Aneta works very well with her and she is simply wonderful. I am one of the lucky ones that if Aneta does have to cut back, my children will be in the upper five and can stay. The issue at hand tonight is the road and safety issues; but there is not an issue with vehicles leaving here at this intersection. I have used both ways to get into and out of the property. Usually at the time when I arrive, I am the only car in the driveway; when I leave a lot of time I just loop around on Country Club Road, you can see the light if you bend down. I have been there for so long that if you know the traffic pattern it is common sense to get in and out of the property. People sitting at the intersection are also aware of us trying to exit onto the street and they are usually forthcoming to let us pull out in front of them. I did see an accident at this intersection one time. It was when the light turned green in both directions; it had nothing to do with someone entering or exiting this property. It takes common sense anywhere you travel to deal with traffic.

Chairman Burden asked what is meant by the top five with the continuation of the daycare.

Ms. Bolla said if this is not approved and Aneta decides to stay open with only five children, then she will have to limit down to just five children. It will be limited to the five children that have been there the longest. It would include my son; however not my daughter who currently gets off the bus there. I do not know what some of these people would do if this is closed down; there are not a lot of options out there for us. It is difficult to find reliable daycare.

Chairman Burden asked if there were any further questions for Ms. Bolla. Hearing none, he asked if there was anyone else with the applicant wishing to speak in favor of the application.

Aneta Smialek said she is the applicant and since her representative made an opening statement, she would like to make the closing statement. I have been working with these children for a long time and really love them. I wanted to talk about the difference between having 12 children and being licensed for 12 children. What we also have to keep track of is the pointing; every child is considered as having points. Points are done by age, every child from infant to 15 months is four points; 16 months to 3 years is three points; etc. We cannot exceed 16 points per person on staff. It is impossible to have 12 children in the morning and 12 in the afternoon on two shifts.

Our traffic to the daycare comes in and out; we do not have too many vehicles. A lot of these parents have two children at one time or they are like Billy & Bobby who are sisters and can bring their children in one vehicle. Basically, we begin at 5:00 a.m. and are shutting down at 5:30 p.m. We have one car come at 5:00 a.m., another at 6:00 a.m., one at 7:45 a.m., another at 8:30 a.m., and so on. Everything is spread out. For pick-up times sometimes we get congested with two or three vehicles arriving at once, but usually it is spread out with pick-ups starting around 3:00 p.m. If you have any questions for me I would be happy to answer.

Chairman Burden said you say twelve is impossible to do, why.

Mrs. Smialek said two shifts of twelve would be impossible. You could run it for one shift which is what we would like to do from 5:00 a.m. to 5:30 p.m. I would work with children for twelve hours a day, Monday thru Saturday, Sundays we are closed.

Chairman Burden said right now your number is eight.

Mrs. Smialek replied yes, eight who are full timers. But then you have children that come in before and after school. There are two children who come in the morning and leave on the bus before eight o'clock; then they come after schools some days, depending on when the parents work. The bus does not come in the afternoon until four o'clock, so the after school children are usually only there 15 to 20 minutes.

Chairman Burden said what you would like to do is go up to twelve children is that correct?

Mrs. Smialek replied yes. There are some people whose children are not currently enrolled in the day care. For example, Aracely Torres' mother is here for a visit and watches her children for her; she would like to re-enter daycare in April after her mother leaves.

Mr. Baugh said if I understand correctly the most you have right now is ten.

Mrs. Smialek said yes, when you add in the after school children.

Mr. Baugh said I know many conditions have been talked about and I know how much you would like to have twelve; but would you be able to make it if we limited it to ten children at a time.

Mrs. Smialek replied yes.

Mr. Da'Mes said if you were to get the blessing of the Planning Commission on this request, this building permit issue still needs to be resolved.

Mrs. Smialek said she would need to contact the building official to schedule an appointment for them to come make an inspection.

Mr. Da'Mes asked are there any VDSS guidelines when you have more than five children. Did they do an inspection, because the thing I noticed was there was not a fence that contained the area? That may be a requirement of the VDSS and it may be a large expense for you.

Mrs. Smialek said they do not require that as long as the children are supervised outside. We have two people outside with the children when they are out. The children are playing at the side of the house where we connect with our neighbor, not the street side. VDSS does come to the house and they inspect the equipment, they make sure that the daycare is clean, and they observe us with the children inside and outside.

Mr. Da'Mes said they have no concern about the drain along the road?

Mrs. Smialek said no, we do not allow the children in that area. Another thing about safety, since you brought it up, VDSS does require that we have a fire drill once a month and keep records of it. We have a fire exit and an emergency escape plan; we actually have twelve evacuation places to exit the day care.

Mr. Chenault said assuming a special use permit is approved and then the building official goes in and finds out there are 14 violations that cannot be fixed or may be cost prohibitive for the applicants to do, what have we accomplished by approving the special use permit?

Mr. Baugh said that goes back to a point that Mr. Sellers brought up about tabling to look at traffic studies. The applicant could table the request indefinitely to allow the review of traffic studies and for the building official to look at the property. Planning Commission could table the request for one month only.

Mrs. Smialek asked would we need to have any building changes done within that one month.

Mr. Da'Mes said it would give you time to have them come in and give you a breakdown of what their expectations would be.

Mr. Fletcher said that is correct, you would have an idea of what the financial cost would be for you to make changes. Mr. Fletcher then reminded Planning Commission that there is the added complication that this is in violation currently and the idea of tabling indefinitely is not necessarily true.

Chairman Burden said do you have a sense of what it may take to outfit your facility for the additional children?

Mrs. Smialek said to the best of my knowledge the square footage is good for the number of children; the State has licensed us for twelve. If you have a one bedroom apartment and they feel you can only be licensed for six children, which is what they license you for. The entire basement of the house is devoted for the daycare and the State licenses us for twelve. We do have a laundry room that is converted to a kitchen type facility, and I do have my office down there.

Mr. Finks said he really feels the City should put a "no parking" sign in the area.

Mrs. Smialek said I have not seen people parking along the road in this area near the corner.

Mr. Finks said he has come through there personally and been blocked because of cars parked.

Mrs. Smialek said even the school bus stops down the street, away from our property so as not to block traffic. I have never seen any of my clients park on either side of the streets near my property.

Mr. Finks said a "no parking" sign would also protect the daycare.

Mr. Chenault said he wants to be fair and tell you that he personally is opposed to this request as it stands now. However, he understands that you may want some more time to check into these issues.

Mr. Finks said when this moves forward to City Council you will probably have a group of people come from the area to oppose the request. It is good to have all your ducks in a row before you go to City Council.

Mr. Da'Mes said I believe what we are saying is that even with delaying this request and bringing in the inspector to do all the requirements of the building code there is no guarantee that this would get approved. What I am hearing from this group is there is more of an issue with the traffic rather than a safety issue with the building.

Chairman Burden asked if there were any further questions for the applicant. Hearing none, he asked if there was anyone else who wished to speak on behalf of the applicant. Hearing none, he asked if there was anyone present who wished to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for questions or comments.

Mr. Snell said is there something magical about the number twelve.

Mr. Fletcher replied that is the maximum allowed by the VDSS.

Mr. Snell said so you could not go up to fourteen.

Mr. Fletcher said no.

Mr. Baugh said when you reach thirteen you need to be a daycare center.

Mr. Jones asked how many crashes have occurred at that intersection.

Mr. Fletcher replied that he could not accurately answer that question.

Mr. Jones said the number one cause of traffic accidents in Virginia is driver inattention, I do not see this use as creating a hazard. What is creating the hazard, in my opinion is two-fold. First, because of the severe traffic on Route 33, the traffic has increased on Country Club Road; perhaps we should address the problem of the traffic on Route 33. Second, unfortunately we seem to be in such a hurry that we run traffic lights and that is what is causing these crashes; everyone is in such a hurry.

Mr. Chenault said he believes that is one of the highest ticketed roads in the City for speeding purposes.

Mr. Jones said I like what the applicant is doing, the service that is being provided to the community and the support of the community for her. With the current conditions of our economy I do not want to be part of putting a business out of business and right now I would vote positively on this issue.

Mr. Snell said when we grant a special use permit they are typically granted to the property, in this particular instance we would grant conditioned to the applicant. If this were granted to the property is there no course of revocation?

Mr. Fletcher said there are opportunities of revocation if they are in violation of any conditions that are placed on the special use permit. What we are trying to accomplish with condition number five is that if circumstances change we would like the opportunity to re-evaluate what is going on at the property. This condition allows that to occur.

Mr. Baugh said if we were to try this and find out later through public input that this was not working out that well, it normally would be a reason to revoke a permit.

Mr. Fletcher said this allows the opportunity that if we continue to receive calls and concerns, or if City Council received concerns, we could say there is enough concern, we need to hear the request again and find out what the situation is.

Mr. Baugh said to Mr. Jones we are thinking along the same lines regarding what makes this spot so dangerous; it is probably much less the people going into the daycare than it is the people passing through the intersection.

Mr. Jones said what I saw from the provided traffic counts, was in that neighborhood there is not that many residences to generate so many vehicle trips. A portion of what is going through there is people cutting through, trying to avoid the Route 33 corridor.

Mr. Baugh said so much of what we have heard tonight and even what the conditions are focused on really talk about the people who are going to be using this property. We have had testimony from most all of them tonight stating that they understand it is a dangerous spot and they must pay extra special attention; but perhaps the real issue is not them as much as it is everyone else using the intersection and not paying that kind of attention.

Mr. Jones said one of the notes I wrote down this evening is due diligence; these folks we have heard from tonight have children in the car and tend to drive a bit differently than when you are by yourself. I agree that the parents using the property are going to be exercising a great deal more

care in and out of the location than those just traveling by. For the most part, until this issue came up, I did not realize there was a home daycare at this property.

Mr. Finks said at a lot of places where you see these daycares there are actually signs up that say “caution, children playing”. Is that something that the City provides or someone else?

Mr. Chenault said the City does that and they have criteria for placing that type of signage.

Mr. Snell said I think that Mr. Chenault’s previous comments about the last minute jeopardy with the building official are relevant. I would like to have the opportunity to further investigate the VDSS licensing and our role in controlling this. I move that we table this request until the next meeting to afford the applicant the opportunity to visit with the building official and come back to us with some ideas on the traffic issue.

Mr. Finks seconded the motion.

Mr. Jones said it could be possible that after consultation with the building official the entire request may be moot from an expense stand point.

Mr. Finks asked if Planning Commission was jeopardizing Ms. Smialek’s operation by tabling this.

Mr. Fletcher said my interpretation would be that if this body is tabling it, she can continue her operation at least until next month.

Chairman Burden said we would need to act on this next month. He then asked if there was any further discussion.

Mr. Da’Mes said I am leaning with Mr. Chenault on having concerns, some of which were answered tonight. It needs to be understood, the building permit process may not be enough to get an approval in the affirmative. We also talked about signs and some of the clients said they follow signs whether they are “no parking signs” or “this way out” signs; perhaps that could be implemented into this by next month so that we have a clearer picture in terms of what we are approving or not approving. In terms of public safety, do we want to ask the City to look at the way the traffic lights conform at the intersection? Several clients said if they duck, they can see the traffic light, can the City do something to remedy it, so that it can be seen.

Mr. Jones said I am sure there is, but it will be a cost factor.

Mr. Baugh said if we are going to vote in favor of the motion it gives us another month to consider other conditions.

Chairman Burden asked if there was further discussion. Hearing none, he called for a roll call vote on the motion.

Commissioner Chenault – yes.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Da’Mes – yes.

Commissioner Snell – yes.

Commissioner Jones – yes.

Chairman Burden – yes.

Chairman Burden said the vote is 7-0 in favor of the motion to table the request. We will hear this at the April 8th regular Planning Commission meeting. He then called for a short recess at 9:21 p.m.

Chairman Burden called the meeting back to order at 9:28 p.m.

Ordinance Amendment – Boardinghouse or Roominghouse Definition Change

Chairman Burden read the request and asked staff to comment.

Mr. Fletcher said staff is requesting to modify the City's Zoning Ordinance Section 10-3-24 by amending the existing definition of "Boardinghouse or rooming house in R-3 zones." Currently, this definition is as follows: *A single detached dwelling, where the property owner or lessee must reside on the premises, and who has obtained a permit and license as required in section 11-4-3 and 12-1-10(24) of the City Code, and where for compensation and by prearrangement, for definite periods, lodging and/or meals are provided for three (3) persons or a maximum of ten (10) persons. Operation of a boarding or rooming house shall not be deemed a home occupation. There shall be no more than one boarding or rooming house on each recorded lot.*

Although boarding and rooming houses are allowed by special use permit within both R-3 districts, currently every boarding and rooming house that exists in the city is a non-conforming use. Boarding and rooming houses, at one time, were permitted by right within the R-2 and R-3 districts; however, an ordinance amendment was approved in 1997 that removed boarding and rooming houses from the R-2 district and transferred them to the special use permit category in the R-3 district.

The proposed changes would address two issues. First, staff would like to remove the text that references Section 11-4-3 of the City Code as this section is no longer relevant to boarding and rooming houses. Secondly, and the main reason for this amendment, is to add language that explicitly requires annual inspections for each future boarding and rooming house. Adding this provision would offer staff a stronger management method for enforcing boarding and rooming houses while also providing a better tool to monitor and evaluate them. Note that this ordinance amendment does not pertain to the regulation of any of the existing non-conforming boarding or rooming houses as these uses are already required to perform annual inspections based upon the code they were approved under.

Staff suggests removing the existing definition and replacing it with the following: *A single detached dwelling, where the property owner or property lessee/operator resides on the premises, and where for compensation and by prearrangement, for definite periods, lodging and/or meals are provided for three (3) persons to a maximum of ten (10) persons. The resident property owner or resident property lessee, who operates the boardinghouse or rooming house, shall be responsible for making an application for any required special use permit. A boardinghouse or rooming house must obtain an annual business license as required by the Harrisonburg City Code and the boardinghouse or rooming house shall also be in compliance with the Virginia Maintenance Code (VMC). The responsible party shall schedule a yearly inspection that shall be conducted between October 1st and October 31st to ensure compliance with the current VMC and other applicable regulations. Should the property not comply with the VMC or other regulations, a specified time shall be given to make corrections. If the corrections are not made within the allotted time, or if the responsible party fails to have the property inspected by October 31st, the special use permit shall automatically expire and become null and void. Operation of a boardinghouse or rooming house shall not be deemed a home occupation.*

Staff supports a favorable recommendation to City Council.

Chairman Burden asked if there were any questions for staff. Hearing none, he asked staff to discuss the next amendment.

Ordinance Amendment – Major Family Day Home in R-3 and R-4

Mr. Fletcher said city staff is proposing to amend the City's Zoning Ordinance by adding "major family day homes" as a use allowed by special use permit within the R-3, Multiple Dwelling Residential District, the R-3, Medium Density Residential District, and the R-4, Planned Unit Residential District, which are Sections 10-3-46, 10-3-48.4, and 10-3-52, respectively.

"Major family day homes" are defined by the Zoning Ordinance as: *A child day care program offered in the residence of the provider or the home of any of the children in care for six (6) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.* This use should not be confused with "minor family day homes," which are defined as: *A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through five (5) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single-family shall be imposed on the day home.* In other words, "minor family day homes" are allowed by right within any residential zoning classification. The Code of Virginia requires local zoning ordinances to consider what we define as a "minor family day home" as a single family home with no further conditions or restrictions placed on such homes. The requirement for a special use permit for "major family day homes" is permitted through the Code of Virginia, which also states that family day homes shall be licensed when the program provides care for six through 12 children.

This amendment emerged from internal staff discussions that originally materialized from a citizen, who asked if they could operate a "major family day home" in a duplex within the R-4 district. After explaining that a "major family day home" was not a use permitted within this district, staff recognized that this prohibition may not be germane for the R-4, and additionally for both R-3 districts, where it also is excluded. Currently, "major family day homes" are allowed by special use permit within the R-1, R-2, R-6, R-7, U-R, and MX-U districts. Staff paid particular attention to the fact that both R-3 districts and the R-4 district allow single family homes and duplexes, by right, as do the other listed sections, all of which also allow "major family day homes" by special use permit. Staff, therefore, thought it was appropriate to allow "major family day homes" by special use permit within both R-3 sections and the R-4 classification. In general, staff does not believe that "major family day homes" are appropriate in townhomes or apartment units because of the nature of those developments having higher densities, close living quarters, small amounts of green space, and minimal parking arrangements, all of which is why staff did not propose to add this use within the R-5 classification that residentially only allows townhouses and apartment units.

Since this use would be allowable only through an approved special use permit, which allows conditions to be added to the application by City Council, staff does not believe this use would negatively impact the integrity of the R-3 classifications or the R-4 district. Staff supports a favorable recommendation to City Council.

Chairman Burden asked if there were any questions for staff.

Mr. Snell said the sentence that reads “a minor day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single-family shall be imposed on the day home” and with the major day home we do not even address the issue of the home occupation permit.

Mr. Fletcher said it does not need a home occupation at that point. The applicant must get a special use permit.

Mrs. Turner said they will probably have a home occupation permit because the Commissioner of Revenue will require them to get a business license and to get a business license for your home you must obtain a home occupation permit.

Mr. Snell said it does not seem reasonable that the minor can be by right, but the major needs a special use permit.

Mr. Da’Mes said given our situation tonight where the building code aspect needs to be incorporated into the mix, should we include some language regarding that.

Mr. Fletcher said we could but building code requirements are applicable to everything that occurs in the city. No matter what use you are doing, you have to be in compliance with building code regulations.

Mrs. Turner said for instance the church that was recommended for approval earlier this evening has to be in compliance with building code; but we did not list that as one of the conditions.

Chairman Burden asked if there were further questions.

Mr. Fletcher asked Mr. Snell if he wanted language added in about home occupation permits.

Mr. Snell replied no; but it just seems odd that you have it in one place but not the other.

Mrs. Turner said a home occupation by definition does not require a special use permit. So when we say a minor family day home is allowed as a home occupation it means you do not have to have a special use permit, you just need to get administrative approval. I think that when we have to sign-off on a home occupation for an approved special use, we will include wording that it is permitted by a special use permit, granted by Council on such and such a date. That way it is noted and does not look as though we are just giving our administrative approval on something.

Chairman Burden asked if the reason for that last sentence, the second portion where it discusses limitations (however, no conditions more restrictive than those imposed on residences occupied by a single-family shall be imposed on the day home) is that providing the level of restriction for a minor family day home.

Mr. Fletcher said that is stating what is allowed by state code. State code says that we must consider minor family day homes as an accessory type use within a single-family home.

Mr. Baugh said you could not make the minor family day home a special use permit item even if you wanted to.

Chairman Burden asked if there were any further questions. Hearing none, he opened a public hearing on the definition change for rooming house and boarding house and asked if there was

anyone who wished to speak in favor or opposed to the request. Hearing none, he closed the public hearing and asked for a motion.

Mr. Chenault moved to approve the amendment to Section 10-3-24 of the City Ordinance regarding boarding and rooming houses in the R-3 zoning classification.

Mr. Snell seconded the motion.

Chairman Burden asked for discussion. Hearing none, he called for a voice vote.

All voted in favor of the motion to approve (7-0). Chairman Burden then opened the public hearing for major family day home in R-3 and R-4 ordinance amendment and asked if there was anyone who wished to speak in favor or opposed to the proposed amendments. Hearing none, he closed the public hearing and asked for a motion.

Mr. Chenault moved to approve the major family day home as a use allowed by special use permit in the R-3, Multiple Dwelling, R-3, Medium Density and R-4, Planned Unit Residential Districts by amending the referenced code sections.

Mr. Jones seconded the motion.

Chairman Burden asked if there was any discussion. Hearing none, he called for a voice vote on the amendment.

All voted in favor of the motion to approve (7-0). Chairman Burden said these two amendments will move forward to City Council on April 14th with a favorable recommendation.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said the zoning inspectors dropped in on the Parkview/Harmony Heights sector of the City this month. There were 16 violations that included inoperable vehicles, discarded materials, and agricultural uses. This is an increase in violations from the second cycle; however it is still a decrease from their first cycle six years ago. Next month they will be traveling to the Northeast section of the City for proactive zoning.

Chairman Burden asked for a reminder of what all the inspectors look for during proactive zoning inspections besides inoperable vehicles and discarded materials.

Mrs. Banks said those things outside of the home that they can notice from the street, which are generally inoperable vehicles and discarded materials; also tall grass and weeds when in season. If they are in a business classification they will look at signage. They also look to see if that particular section has a rezoning or special use that has conditions or proffers and they look to see that the items are in place. They cannot do occupancy violations on proactive zoning.

Mr. Baugh said at City Council last night we affirmed everything that had come to this body by a unanimous vote.

Other Matters

Update on Bicycle and Pedestrian Plan

Thanh Dang said she is a Planner with the Public Works Department and was here tonight to give Planning Commission an update on some things that the Bicycle and Pedestrian Committee has been working on, along with some of our plans for updating the Bicycle and Pedestrian Plans. There is a committee that meets once quarterly and through them, we, Public Works and Community Development Departments, listen to concerns and ideas and try to help coordinate some of their projects within some of the City's projects.

Some accomplishments of the Bicycle and Pedestrian Plans are multi-use trails, bicycle accommodations, and sidewalk and pedestrian related things. A breakdown of these was provided in your packet; these include the Arboretum trail, Rockingham Drive connector, new bicycle racks around town, and applied for a grant in partnership with Safe Kids of the Central Shenandoah Valley for sidewalks in the Keister Elementary School area.

Through another grant that was applied for thru VDOT, there will be sidewalks On East Market Street from Burgess Road to University Boulevard; this construction will begin this year. We have also applied to VDOT for another grant for sidewalks from University Boulevard to Evelyn Byrd Avenue; however we have not gotten a response yet on that. The City has also budgeted \$200,000 for sidewalk along the western side of University Boulevard; we will see how far that money can get us. We are currently working on an application with Waterman Elementary School for a Safe Kids grant that would help with sidewalks and pedestrian improvements throughout that area.

As far as the 2010 update and adoption of the Bicycle and Pedestrian Plans, our idea is to have the two plans be worked on concurrently; previously they were not. I have also provided a list of persons in the community that might serve on our update committee; looking at a group of ten to twelve persons. If you have any comments or know others that might need to be invited to join the committee please let me know; but I would like for someone from the Planning Commission to participate. If you have any questions for me I would be happy to answer them.

Mr. Chenault asked how do we stand on the railroad crossings along South Main Street and Country Club Road.

Ms. Dang said we received the agreement and the City Manager signed it; however the railroad company found an error on their part, so we are waiting for that correction. As soon as that happens the Public Works Department is ready to move forward with a contractor and get our part of the work done. The railroad has said that they would like to move forward with South Main Street first.

Chairman Burden asked if there were any further questions. Hearing none, he asked if there was anyone interested in being a Planning Commission representative on the Bicycle and Pedestrian Plans Committee.

Mr. Chenault said he would like to volunteer as that representative.

Chairman Burden asked if there was anything else under other matters.

Mr. Fletcher said we need to schedule a meeting regarding how we want to proceed with the Comprehensive Plan update. What the committee is going to look like; when we are going to start meeting; all the technicalities so that we can get moving on this update.

Mrs. Turner said after Planning Commission gets an idea of when and what you want to do, it would be a good idea to see if City Council wants to have a joint meeting and discuss it. Or at least have Mr. Baugh take it back to City Council to see if they are comfortable with your plans.

Mr. Fletcher asked if Planning Commission would like to schedule a date now. Perhaps the Wednesday after next month's regular meeting, this would be April 15th.

Chairman Burden asked if there was consensus to meet on the 15th at 7:00 p.m.

All members agreed to the date of April 15th at 7:00 p.m. in the Community Development Classroom.

Mr. Baugh said he would report back to Planning Commission during the regular meeting on April 8th regarding City Council's thoughts.

Mr. Snell said it would seem reasonable to see what City Council's ideas were so that we could put a size on the committee. Perhaps we should invite Council to the meeting on the 15th.

Mr. Baugh said he would mention that at City Council.

Adjournment

The meeting was adjourned at 10:00 p.m.

Chairman Jared Burden

Secretary, Alison Banks